PART IV

Section—2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF KARNATAKA

Social Welfare and Labour Department

Labour Dispute.—Industrial Dispute between the workmen and the management of the Chief Engineer (General) K. S. E. B. and Superintendent Engineer (Electrical) Munirabad.

Award of the Presiding Officer, Additional Industrial Tribunal, Bangalore, published.

Read the following Papers :

(1) Letter No. AIT 662/74-75, dated 3rd February 1975, from Shri G. S. Bhagwat, Presiding Officer, Additional Industrial Tribunal, Bangalore-20.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated : This 31st Day of January, 1975.

Present

Shri G. S. Bhagwat, B.A., LL. B., *Presiding Officer.*

A. I. D. No. 22 of 1973.

Workmen of Mysore State Electricity Board, Munirabad, represented by the President, Mysore State Electricity Board Employees' Union, Local Committee, Munirabad.

—I-Party.

Vs.

The Management of Mysore State Electricity Board (Chief Engineer) (General) and Superintending Engineer (Electrical), Munirabad. —*II-Party*.

Apperances :

For the I-Party.—Sri H. I. Basha Saheb, President, Karnataka Electricity Board Employees' Union, Local Committee, Munirabad.

For the II-Party.—Sri B. C. Prabhakar, Joint Secretary Mysore State Employers' Association, Bangalore.

AWARD

The Government of Mysore now Karnataka being of opinion that an industrial Dispute existed between the workmen and the management of the Mysore State Electricity Board (Chief Engineer) (General) and Superintending Engineer, (Electrical) Munirabad, in exercise of the powers conferred on the State Government under Section 10 Sub-Section 1 clause (d) of the Industrial Disputes Act, by their Order No. SWL 916 LLD 73 dated 29th August, 1973 referred the said dispute to the Additional Industrial Tribunal at Bangalore and set down the following points of dispute for adjudication :

"I. Is the Superintending Engineer Electrical Mysore State Electricity Board, Munirabad, justified in refusing to promote Sri Vemanna, G. Unnikrishna, S. S. Samual and G. Rudrappa as II Grade Clerks with effect from 18th July 1959, 5th August 1960, 3rd October 1963 and 21st December 1965 respectively and to grant the consequential benefits from the date of their appointment?

II. If not, what relief are the above said workmen entitled to ?"

2. On receipt of the aforesaid reference it came to be numbered as A. I. D. No. 22/73 on the file of this Tribunal. Notices were issued to both the parties to file their statement of demands.

3. Workmen of Mysore State Electricity Board Munirabad (hereafter called as the I-party) sent their claim statement by post and received in this office on 29th July 1973. The contentions of the I-party are these: The spirit of the Award in A. I. D. 14/66 is that the services of the persons named in the reference as 2nd Grade Clerks should have been regularised from the date of entry into service and if this was done they would have been elegible for promotion from the respective date of passing the qualified examination or from the date of promotion of their juniors as 1st Grade clerks whichever is earlier. The management of Mysore State Electricity Board overlooked their seniority by violating Section 10 Sub-Section 1 clause (d) of the Industrial Disputes Act and not implementing the spirit of the Award in A. I. D. 14/66. Hence the prayer of the I-party is that their seniority should be fitted under the appropriate place in the seniority list and issue promotion orders from the date of their junior promoted as 1st Grade clerk and also pay the financial benefits duly fixing their pay from the day of their junior who has already reported for duty as a 1st Grade clerk and is earning higher emoluments.

4. The management of Mysore State Electricity Board by Chief Engineer Bangalore (hereafter called the II-party) filed its counter statement on 29th November 73. The II-party management resisted the claim of the I-party on the ground that it is based on wrong assumption of facts and the reference itself is bad and submitted that it is liable to be rejected; on this count alone. Without prejudice to the above contention it was further contended that the II-party has complied with the Award in A. I. D. 14/66 by absorbing the I-party members in permanent vacancies in

the first phase itself. The language of the Award is clearly intended not to give any retrospective operation to it. In view of the Award the present reference for recognising appointment otheryise than in accordance with the Award cannot form the basis for the dispute. The claim for promotion depended not merely upon seniority but upon merit which is a matter entirely within the discretion of the management. This Tribunal cannot go into the question of the merits of the I-party members for promotion in the absence of any unfair labour practice or *malafides*. There is not even an allegation of *malafides* or unfair labour practice. In any event the claim of the I-party claiming seniority over others is not justifiable in this proceeding and hence submitted that the reference be rejected.

5. The 2nd member of the II-party adopted the counter filed by the I-member of the I-party.

6. On the above pleadings the following additional issues incidental to the main points of dispute were set down on 16th February 1974 for determination:

1. whether the reference made is bad for reasons stated in para one of the counter.

2. whether the II-party proves that the present reference does not form the basis of dispute in view of the previous Award ?

7. In support of their claim that their services should have been regularised from the date of entry into service and if this was done they would have been eligible for promotion from the respective date of passing the qualified examination or from the date of promotion of their juniors as 1st Grade clerks. W. W-1 Unnikrishna was examined and Ext. W-1 was marked on behalf of the I-party.

8. Per contra to show that the management of the II-party has fully complied with the Award in A. I. D.

14/66 by absorbing the I-party members in permanent vacancies in the first phase itself and in view of this Award the present reference for recognising appointments otherwise than in accordance with the Award cannot form the basis of a dispute and the rule governing in seniority M. W-1 D. S. Srikantaiah, Superintending Engineer, K. H. B., Munirabad was examined and Exts. M-1 to M-9 were marked on behalf of the II-party.

9. Shri B. C. Prabhakar appearing for the II-party invited my attention to the reference and the claim statement and submitted that the reference does not include the question as to whether persons mentioned therein as 2nd Grade clerks should have been regularised from the date of entry into service and if this was done they would have been eligible for promotion earlier. Undoubtedly these were not matters covered by the reference. The issue that is referred for adjudication, as I read the reference is whether the Mysore State Electricity Board is justified in refusing to promote the persons named therein as 2nd Grade clerks with effect from the dates mentioned therein. It is clear from the claim statement itself that there is no dispute regarding the promotion of these persons as 2nd Grade clerks. It is therefore abundantly clear that the claim statement filed by the I-party is based not upon the precise issue referred for adjudication, but on considerations not covered by it. It is well settled that the pleadings of the parties can be looked into only to clarify the points of dispute set out in the order of reference, but cannot be allowed to alter the terms of reference or the basis of the reference. There is no doubt that the Tribunal can go into the matters incidental to the dispute. Looking at the reference in this case from these points of view the contentions of Sri Basha Saheb for the I-party that the services of the I-party should have been regularised from the date of entry into service and if this was done they would have been eligible for promotion earlier cannot be accepted, as the contentions set forth in the claim statements are not incidental to the main

dispute. Further it would totally alter the scope of reference. The wordings of the reference are clear. What is stated in the reference is whether the Mysore State Electricity Board is justified in refusing to promote the persons named therein as 2nd Grade clerks with effect from the dates mentioned therein. But there is no dispute regarding their promotion as 2nd Grade clerks as is clear from the claim statement itself. In the circumstances what can be said in this case is that the Government of Mysore which made the reference did not clearly understand the exact nature of dispute between the parties. What has been referred to is quite different from what the I-party intended. Shri Basha Saheb for the I-party frankly conceded that if the reference is taken on the face of it, he cannot support the reference as it does not represent the real nature of dispute.

10. Shri B. C. Prabhakar learned Council for the II-party invited my attention to the observation of the Madras High Court reported in Ramamurthy verses Tirunelveli District National Plantation Workers' Union, (1963 I LAB LJ 507) Madras where the scope of Section 10 (4) has been explained as follows:

"Section 10 (4) of the Industrial Disputes Act, 1947 makes it clear that when a reference is made to a Labour Court for adjudication it shall confine its adjudication to the point of dispute referred for adjudication. If the reference is made on an incorrect assumption, it is certainly not open to the Industrial Tribunal while so holding, to enlarge, by its own choice, the scope and widened the issues for decision and feed for enquiry including the evidence".

Following the aforesaid decision I am clearly of the view that the contention now raised by the I-party in their claim statement is beyond the scope of the reference. Reference as it is worded is not supported by the I-party and on this count alone the reference must fail.

In this view of the matter the questions comprised in other issues do not arise for the consideration, the Tribunal having no jurisdiction to deal with those questions.

In the result this reference fails and the same is rejected.

Each party will bear this or its own costs.

G. S. BHAGWAT,
Presiding Officer,
Additional Industrial Tribunal,
Bangalore.

ORDER No. SWL 45 LLA 75, BANGALORE, DATED THE 28TH FEBRUARY, 1975.

S. O. 959.—

WHEREAS by State Government Order No. SWL 916 LLD 73, dated 29th August 1973, the Industrial Dispute between the workmen and the management of The Chief Engineer (General) K.S.E.B. and Superintendent Engineeer (Electrical) Muniraad, was referred to the Additional Industrial Tribunal, Bangalore, for adjudication.

AND, WHEREAS the Additional Industrial Tribunal Bangalore, has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette*.

By Order and in the name of Governor of Karnataka,

K. MYLARAPPA,
Under Secretary to Government,
Social Welfare and Labour Department.